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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

JERRY D. OLDS
State Engineer/Division Director

DIAMOND H FARM, 1 LLC
ATTN: BILL HIRSCHI
4685 BERG ST
NORTH LAS VEGAS, NV 84720

RE: MEASURING DEVICE NOTICE / SEAA 1226 CONTINUATION AND CLARIFICATION

Mr. Hirschi:

This letter is provided as a follow-up and continuation of the referenced State Engineer Agency Action 1226 (copy attached). Subsequent to communications with your attorney, Rick Hafen, we are providing the attached clarifying information regarding the subject Notice.

Thank you for your cooperation in attending to this matter in a timely manner. If you have any questions concerning this Notice, please contact me by phone at (801) 538-7430 or by email at MikeSilva@utah.gov.

Dated this 2nd day of May 2008

Mike Silva
Distribution Engineer

pc: Rick Hafen, Attorney for Diamond H Farm 1, LLC (via Email to: rhafen@infowest.com)
Kurt Vest, P.E. / Regional Engineer
Kerry Carpenter, Enforcement Engineer
LaVar Davis / Water Commissioner / PO BOX 483 / MILFORD UT 84751
April McKeon/ Water Commissioner/ PO BOX 555/ MILFORD UT 84751
File: SEAA 1226

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SEAA 1226
Continuation and Clarification to the Original Notice:

1. Water rights affected by the Notice ("subject water rights"):
 - a. **71-1668** – The records indicate the Respondent owns 100% of this right; the right provides for 81.50 acres in portions of Sec. 19 & 24, T30S, R10W, SLB&M.
 - b. **71-1766** – The records show the Respondent owns 100% of the irrigation portion of this right; the Respondent's portion provides for 20.00 acres of irrigation in portions of Sec. 18 & 19, T30S, R10W, SLB&M.
 - c. **71-94** -- The records show the Respondent owns 100% of this right and, under approved change application **a33795**, this right provides for the irrigation of 32.2125 acres in portions of Sec. 19, T30S, R10W, SLB&M.
 - d. **71-4102** – This right, owned 100% by the Respondent was inadvertently omitted from the original Notice; the right provides for irrigation of 56.40 acres in portions of Sec. 19 & 20, T30S, R10W, SLB&M, supplemental with shares in the Rocky Ford Irrigation Co.
2. Water right **71-3535**, evidently owned by Valley Stratton Family Trust, was inadvertently listed in the original Notice and is hereby excluded from further consideration.
3. Summary of subject water rights: With water right 71-3535 excluded and water right 71-4102 is included, the Respondent has underground rights sufficient for irrigation of **190.1125** acres in portions of Sections 18, 19, 20 & 24, T30S, R10W, SLB&M. The water can be diverted from either of two wells ("subject wells"):
 - a. For water rights **71-1668 & 71-1766**, the authorized point of diversion is that well located approximately South 1,310 ft. and East 1,285 ft. from the N¼ Corner of Section 19, T30S, R10W (WIN 19248, 1960);
 - b. For water right **71-94 (a33795) & 71-4102**, the authorized point of diversion is that well located approximately North 2,074 ft. and East 723 ft. from the S¼ Corner of Section 19, T30S, R10W (WIN 19249, 1991).
4. Additional conditions:
 - a. If either of the subject wells will be used during the 2008 irrigation season for diversion of any portion of the subject water rights, each well to be used must

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first be equipped with an acceptable totalizing water meter, installed in accordance with manufacturer's specifications for accurate operation.

- b. Totalizer readings are to be recorded by the Distribution Commissioner, LaVar Davis before any water is diverted from either of the subject wells;
 - c. If either of the subject wells will not be used during the 2008 irrigation season, the Respondent must provide a *written statement* to the effect, to be delivered to the Division of Water Rights or to Commissioner LaVar Davis **before June 1, 2008**.
 - d. If a declaration is made that either or both of the subject wells will not be used during the 2008 irrigation season, the metering requirement is waived for the current irrigation season. However, the subject wells must be properly equipped and readings taken as described herein before water is diverted therefrom in any future year (provided the current distribution policy and water right configuration remain in place).
 - e. The Distribution Commissioner will continue observe the subject wells periodically to assure they are not being used without meters. Once the either of the subject wells are equipped with meters, periodic readings will be recorded to assure compliance with the limitations of the subject water rights.
 - f. If the Respondent diverts water from either of the subject wells without meters having been installed and totalizer readings taken as described herein, an Order to Cease Use of Water will be issued. Violation of an Order to Cease Use of Water will authorize the commencement of an enforcement action by the State Engineer under §73-2-25, Utah Code Ann., and will make the Respondent subject to fines and penalties as set forth in §73-2-26, Utah Code Ann.
 - g. If the diversion limitations of the subject rights for either of the subject wells are exceeded, an Order to Cease Use of Water will be issued. . Violation of an Order to Cease Use of Water will authorize the commencement of an enforcement action by the State Engineer under §73-2-25, Utah Code Ann., and will make the Respondent subject to fines and penalties as set forth in §73-2-26, Utah Code Ann.
5. Waiver of metering requirement by establishment of "full rights:"
- a. The metering requirements described under this Notice may be waived if the Respondent shall file and the State Engineer shall approve one or more applications for change of water (permanent or temporary) to establish water rights in the subject wells sufficient to provide a full supply of water (when combined with the existing subject water rights) to irrigate the Respondent's entire acreage on which the Rocky Ford Irrigation Co. shares are used.

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- b. The described waiver shall remain in effect only to the extent that such change applications shall retain their valid status as “approved” or “perfected” applications.
- c. In filing change applications for the intent of achieving this waiver of the metering requirement, the Respondent shall declare that intent in the body of said applications.

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